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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ELF-MAN, LLC,

Plaintiff,

vs.

RYAN LAMBERSON,

Defendant.

No. 2:13-CV-00395-TOR

**RESPONSE TO DEFENDANT'S
MEMORANDA IN SUPPORT OF THE
CENTER FOR JUSTICE'S MOTIONS
TO INTERVENE AND TO UNSEAL
EXHIBITS (ECF NOS. 118-120)**

I. INTRODUCTION

Maureen VanderMay, former counsel for Plaintiff Elf-Man, LLC ("Elf-Man"), responds as follows to Defendant Ryan Lamberson's Memorandum in Support of the Center For Justice's Motion to Intervene and Memorandum in Support of the Center For Justice's Motion to Unseal Exhibits.

1 VanderMay is not a party to the above-captioned matter. The records the Center
 2 For Justice seeks to unseal are those of her former client and not those of VanderMay.
 3 Because, however, the allegations Lamberson presents to the Court are the same
 4 allegations raised in his unsuccessful bid to obtain an award of attorney fees from
 5 VanderMay, VanderMay files this response in order to correct the record.

6 **II. FACTUAL AND PROCEDURAL BASIS**

7 On July 21, 2014, Lamberson filed unsuccessful motions for sanctions against
 8 VanderMay and Elf-Man pursuant to 28 U.S.C. §1927 and CR 11. (ECF Nos. 78, 80) The
 9 motions were denied on procedural and substantive bases. (ECF No. 99 at 12, 18-19)

10 Lamberson moved for sanctions under 28 U.S.C. §1927 alleging (1) Elf-Man and
 11 its counsel engaged in sham litigation and acted in bad faith (ECF No. 78 at 2-4; ECF No.
 12 79 ¶¶3-7); (2) Elf-Man and its counsel concealed the real party in interest (ECF No. 78 at
 13 3, 5, 7-9; ECF No. 79 ¶¶8-9, 12-14); and (3) Elf-Man and its counsel had no evidence of
 14 illegal downloading (ECF No. 39 at 6-7; ECF No. 79 at ¶10) In response to Lamberson's
 15 motion for sanctions under 28 U.S.C. §1927, this Court stated:

16 Defendant cites egregious facts and outcomes from other cases in other
 17 jurisdictions. But there is simply no evidence in this case of the kind of bad
 18 faith that warrants sanctions under section 1927 or the Court's inherent
 19 authority.

20 (ECF No. 99 at 12, ll. 12-15)

21 Lamberson moved for sanctions under Federal Rule of Civil Procedure 11, alleging
 22 VanderMay did not make an adequate investigation and signed a baseless complaint.
 23 (ECF No. 80 at 2-9; ECF No. 81 ¶¶4-5, 13, 20-27) The Court found that Lamberson's
 24 allegations regarding VanderMay's investigation were "not probative of Ms.
 VanderMay's disregard for her duty to investigate in good faith." (ECF No. 99 at 19) The

1 Court additionally found that Lamberson had failed to meet the procedural requirements
2 for sanctions under Rule 11, in that Lamberson only generally and summarily informed
3 VanderMay of the basis of the motion before filing his motion. (ECF No. 99 at 16-17)
4 The Court thus denied Lamberson's motion for sanctions under Rule 11 on both
5 substantive and procedural bases. (ECF No. 99 at 18, 19)

6 In support of the Center For Justice's Motion to Unseal, Lamberson raises the
7 same allegations raised in his unsuccessful attempt to obtain monetary sanctions from
8 VanderMay. (See, e.g., ECF No. 120, ¶¶9, 11-13, 15-16, 18-19, 21; ECF No. 125, ¶19)
9 Lamberson claims the Motion to Unseal should be granted because Elf-Man (and by
10 extension VanderMay) engaged in "sham litigation," and the sealed documents are proof
11 of the same. (ECF Nos. 119 at 2-4; ECF No. 120 at ¶¶10-14) Lamberson argues the
12 sealed documents also will provide proof that Elf-Man's investigators were the real
13 parties in interest and that the explanation regarding their relationship to the Plaintiff was
14 fabricated. (ECF No. 119 at 4-6; ECF No. 120 at ¶¶21, 27) And Lamberson argues that
15 the sealed documents will show that Elf-Man fabricates lists of illegal downloads by
16 defendants in order to leverage settlement. (ECF No. 119 at 7; ECF No. 120 ¶¶31-34)

17 **III. ANALYSIS**

18 VanderMay takes no position in regards to the Motion to Unseal. She objects,
19 however, to Lamberson's reassertion of allegations previously determined by this Court
20 to be insufficient to support Lamberson's claims of sham litigation, bad faith,
21 concealment of the true party in interest, and fabrications of evidence. If left
22 unchallenged, Lamberson's spurious allegations regarding VanderMay could be
23 construed as true.

24 According to the law of this case, Lamberson's allegations in support of the Center
For Justice's Motion to Unseal are insufficient to support his claims of insufficient

1 investigation, bad faith, and sham litigation. United States v. Estrada-Lucas, 651 F.2d
 2 1261, 1263-64 (9th Cir. 1980) (holding a decision of law once made becomes the law of
 3 the case and should not be changed absent clear error); Ortiz-Tarazon v. USA, 2017 WL
 4 588738 at 2 (slip op.) (D. Ariz., Feb. 14, 2017) (holding recasting of Rule 11 argument as
 5 ineffective assistance of counsel is barred by the law of the case). Because this Court has
 6 already found the allegations insufficient in its previous ruling, they should be given no
 7 weight in this proceeding. See Zamir v. Bridgepoint Educ., Inc., ___ F. Supp. 3d ___,
 8 2017 WL 1336744, at 9 (S.D. Cal. Apr. 5, 2017).

9 Lamberson's renewal of the allegations that formed the bases for his unsuccessful
 10 motions for sanctions, particularly in view of the clear prejudice to VanderMay, is
 11 inappropriate.

12 IV. CONCLUSION

13 Based upon the foregoing facts and law, VanderMay asks this Court to disregard
 14 all allegations of Lamberson that were previously raised in his motions for sanctions
 15 against VanderMay and Elf-Man, as contrary to this Court's previous findings and
 16 conclusions.

17 DATED this 9th day of January, 2018.

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1 I hereby certify that on January 9, 2018, I electronically filed the foregoing with
2 the Clerk of the Court using the CM/ECF System which will send notification of such
3 filing to the following:
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